

**Internal Revenue Service**

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Department of the Treasury  
Washington, DC 20224

Person To Contact:

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PLR-148655-09

Date:

February 17, 2010

Corporation:

Trust:

Date:

City:

State:

Facilities:

Year:

Company:

Agreement:

Trustee:

Administrator:

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Dear \_\_\_\_\_ :

This letter responds to a letter from your authorized representative dated October 7, 2009, submitted on behalf of the Corporation, requesting rulings that (1) the Trust's income is excludable from gross income under § 115 of the Internal Revenue Code and (2) the Trust is not required to file an annual income tax return. The Corporation represents the following facts.

**Issue 1 – § 115(1)****FACTS**

The Corporation, formed on the Date by the City, is a public corporation with all the powers of eminent domain conferred on municipalities in the State. Governed by a board of directors elected by the city council of the City, the Corporation owns and operates the Facilities.

Since the Year, the Corporation has had a self-insuring agreement with the Company to administer its health and welfare benefits plan (the "Plan"), along with a excess health insurance policy under the Plan.

The Corporation established the Trust pursuant to the Agreement to provide post-employment benefits (other than pension benefits), such as medical, dental, vision, life insurance, longterm care insurance, and other similar benefits to its eligible employees.

The Trust allows for pre-funding. Employer contributions, which are received and invested by the Trustee, consist solely of amounts with respect to the Corporation's unfunded liability and reasonable expenses with respect to the Plan. Employee contributions are not allowed.

All contributions and transfers of assets, together with net income and earnings, are held exclusively to provide health and welfare benefits under the Plan to eligible employees. Assets shall not be used for, or diverted to, any other purpose, except for the refund of contributions for mistake of fact or upon receipt of an unfavorable § 115 private letter ruling.

Except for payment of reasonable expenses, only the plan administrator, designated by the Corporation, may withdraw or otherwise direct the Trustee to make disbursements. Except for the purpose of covering benefits for eligible employees or

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contributions subject to refund, no such withdrawals or disbursements shall be made unless the Corporation's obligation under the Plan has been fully satisfied, at which time any excess assets shall be paid to the Plan or returned to the Corporation, as directed by the Administrator. In no event shall assets be transferred to an organization that is not a state, a political subdivision of a state, or a § 115 entity.

The Trustee, who may be removed at the discretion of the Corporation, shall receive all assets for the Trust on behalf of the Corporation and shall hold the assets in trust for the exclusive purpose of providing benefits under the Plan to eligible employees. No beneficiary of the Trust shall have any right to take part in, or direct or control of, the business of the Trust, nor may any beneficiary act for or bind the Trust or the Trustee or otherwise transact any business on behalf of the Trust.

#### LAW AND ANALYSIS

Section 115(1) provides that gross income does not include income derived from any public utility or the exercise of any essential government function and accruing to a state or any political subdivision thereof.

In Rev. Rul. 77-261, 1977-2 C.B. 45, income from an investment fund, established under a written declaration of trust by a state, for the temporary investment of cash balances of the state and its participating political subdivisions, was excludable from gross income for federal income tax purposes under § 115(1). The ruling indicated that the statutory exclusion was intended to extend not to the income of a state or municipality resulting from its own participation in activities, but rather to the income of a corporation or other entity engaged in the operation of a public utility or the performance of some governmental function that accrued to either a state or municipality. The ruling points out that it may be assumed that Congress did not desire in any way to restrict a state's participation in enterprises that might be useful in carrying out projects that are desirable from the standpoint of a state government and which are within the ambit of a sovereign properly to conduct. In addition, pursuant to § 6012(a)(2) and the underlying regulations, the investment fund, being classified as a corporation that is subject to taxation under subtitle A of the Code, was required to file a federal income tax return each year.

In Rev. Rul. 90-74, 1990-2 C.B. 34, the Internal Revenue Service determined that the income of an organization formed, funded, and operated by political subdivisions to pool various risks (casualty, public liability, workers' compensation, and employees' health) is excludable from gross income under § 115. In Rev. Rul. 90-74, private interests neither materially participate in the organization nor benefit more than incidentally from the organization.

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The Trust was established and is maintained by the Corporation as a separate entity to provide various health and welfare benefits under the Plan to its retired employees and their spouses and dependents. Providing such benefits to former public employees constitutes the performance of an essential governmental function within the meaning of § 115(1). See Rev. Rul. 90-75 and Rev. Rul. 77-261.

The provision of health and welfare benefits to participating retirees and their dependents satisfies the obligation of the Corporation under the Plan to provide those benefits; thus, the income of the Trust accrues to the benefit of the Corporation, which is a public entity with municipal powers. No private interests participate in, or benefit from, the operation of the Trust, other than as providers of goods and services. Any amounts remaining in the Trust after all health and welfare benefits, plus reasonable fees and expenses, have been paid shall be paid to the Plan or returned to the Corporation. The benefit to retired Corporation employees is incidental to the public benefit. See Rev. Rul. 90-74.

## **Issue 2 – § 6012(a)(4)**

### **FACTS**

The Corporation created the Trust to provide a vehicle for funding retiree health and welfare benefits under the Plan. The income of the Trust consists solely of contributions from the Corporation, plus investment income. No contributions will be made to the Trust by employees. No part of the Trust may be diverted to purposes other than the exclusive benefit of the participants and their beneficiaries. No part of the Trust's net earnings may inure to the benefit of any private person. The parties to the Agreement are the Corporation and the Trustee.

The Corporation will have exclusive authority and discretion to manage and control the assets of the Trust, but will delegate investment management of trust assets to the Trustee pursuant to the terms of the Agreement. The Agreement provides that the Corporation may remove and replace the Trustee at any time upon 90 days prior written notice. In the event of the Trustee's removal or resignation, a successor trustee will be appointed by the Corporation.

The Corporation represents that the purpose of the Trust is to vest in the Trustee responsibility for the protection and conservation of trust property for the benefit of the Plan participants and their spouses and dependents, none of whom can share in the discharge of this responsibility for profit.

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The Agreement provides that the Corporation may amend or terminate the Trust at any time, provided that trust assets shall be used only for the purpose of providing health and welfare benefits to the participants of the Plan. In no event will the assets be transferred to an entity which is not a state, a political subdivision of a state, or an entity the income of which is excluded from gross income under § 115 of the Code.

### LAW & ANALYSIS

Section 301.7701-1(b) of the Procedure and Administration regulations provides, in part, that the classification of organizations that are recognized as separate entities is determined under §§ 301.7701-2 through -4, unless a provision of the Code provides for special treatment of that organization.

Section 301.7701-4(a) of the regulations provides, in general, that an arrangement will be treated as a trust under the Code if it can be shown that the purpose of the arrangement is to vest in trustees responsibility for the protection and conservation of property for beneficiaries who cannot share in the discharge of this responsibility and, therefore, are not associates in a joint enterprise for the conduct of business for profit.

The Corporation's contributions to the Trust are to be used to pay retiree health and welfare benefits for eligible retired employees and their spouses and dependents. The Trustee is charged with the responsibility of the protection and conservation of trust property for the benefit of the beneficiaries of the Trust. The beneficiaries of the Trust cannot share in the discharge of the Trustee's responsibility for the protection and conservation of property and, therefore, are not associates in a joint enterprise for the conduct of business for profit. Assuming that the Trust is recognized as a separate entity under § 301.7701-1, we conclude that the Trust is a trust under § 301.7701-4(a).

Section 6012(a)(4) provides that every trust having taxable income for the tax year, or having gross income of \$600 or more for that year regardless of the amount of taxable income, must file a return with respect to income taxes under subtitle A.

### CONCLUSION

Based solely on the facts and representations submitted by the Corporation:

1. We conclude that the income of the Trust is derived from the exercise of an essential governmental function and will accrue to a state or a political subdivision thereof for purposes of § 115(1). Consequently, we rule that the Trust's income is excludable from gross income under § 115(1).

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2. We conclude that the Trust is classified as a trust under § 301.7701-4(a). Section 6012(a)(4) does not require a trust without taxable income to make a return of income when gross income is less than \$600. Because the Trust's income is excludable from gross income under § 115(1), we rule that the Trust is not required by § 6012(a)(4) to file an annual income tax return.

Except for the specific rulings above, we express or imply no opinion concerning the federal tax consequences of the facts of this case under any other provision of the Code. Specifically, we express or imply no opinion regarding the federal tax consequences of contributions to, or payments from, the Plan, including (but not limited to) whether contributions to the Plan are excludable from the gross income of employees, former employees, or retirees under § 106 and whether payments from the Plan (including reimbursements of medical expenses) are excludable from the gross income of employees, former employees, or retirees under §§ 104 or 105.

Under a power of attorney on file with this office, we are sending a copies of this letter to your authorized representatives.

This ruling is directed only to the taxpayer who requested it. According to § 6110(k)(3), this ruling may not be used or cited as precedent.

Sincerely,

SYLVIA HUNT  
Assistant Chief  
Exempt Organizations Branch 2  
Office of Division Counsel /  
Associate Chief Counsel  
(Tax Exempt & Government Entities)

enclosures: copy for § 6110 purposes

cc: